

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

BRITTANI CLAY,)	Case No.: 2:15-cv-10043
)	
Plaintiff,)	
v.)	Hon.
)	
CAPITAL ONE BANK,)	
)	
Defendant.)	
)	
_____)	

COMPLAINT

NOW COMES Plaintiff, BRITTANI CLAY (“Plaintiff”), through her attorneys, KROHN & MOSS, LTD., and hereby alleges the following against Defendant, CAPITAL ONE BANK (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION and VENUE

2. Jurisdiction of this court arises pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as the conduct giving rise to this action occurred in this district as Plaintiff resides in this district and Defendant transacts business in this district”

PARTIES

4. Plaintiff is a natural person residing in Warren, Michigan, Macomb County.

5. Defendant is a business entity with an office located 4581 Cox Road, Glen Allen,

Virginia 23060.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

7. In 2014 Defendant began placing telephone calls to (313) 953-15xx, Plaintiff's cellular telephone number.

8. These calls were placed to attempt to collect payments from Plaintiff for a consumer account.

9. These calls were for non-emergency purposes.

10. Upon information and belief based on the frequency, number, and nature of the calls, Defendant placed these calls to Plaintiff using an automatic telephone dialing system or other equipment capable of storing and/or producing telephone numbers ("auto dialer").

11. In or around July 2014, Plaintiff instructed Defendant to stop calling her cell phone.

12. Plaintiff repeated this instruction to Defendant on multiple occasions.

13. Plaintiff revoked any consent, actual or implied, for Defendant to use an auto dialer to call her cell phone.

14. Defendant continued to use an auto dialer to call Plaintiff's cell phone.

15. Between October 14 and December 31, 2014, Defendant used an auto dialer to call Plaintiff's cell phone at least one hundred fifteen (115) times.

16. Defendant did not have Plaintiff's express consent to use an auto dialer to place these calls to Plaintiff's cell phone.

17. Defendant intended to use an auto dialer to place these calls.

18. Defendant voluntarily and willfully placed these calls.

COUNT I
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

19. Defendant's actions alleged *supra* constitute numerous negligent violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

20. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violates of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, BRITTANI CLAY, respectfully requests judgment be entered against Defendant, Capital one bank, for the following

21. Statutory damages of \$500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);

22. Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C);

23. All court costs, witness fees and other fees incurred;

24. Any other relief that this Honorable Court deems appropriate.

Dated: January 7, 2015

KROHN & MOSS, LTD.

/s/ Adam T. Hill
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